**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 508 OF 2004**

(1)Mr. Domingos Fernandes;

(2)Mr. Fedelis Fernandes;

(3)Mrs. Joanita Fernandes;

(4)Mr. Joe Fernandes;

All residents of House No. 622/1, Baga-Arpora, Bardez-Goa. ... Petitioners.

Versus

(1)Capt.Harchanranjit Singh Thind, major of age, resident of Chennai, represented herein by his duly constituted Attorney, Shri Porus Adi Doctor, major of age, resident of Perin Villa, B.B.Borker Road, opposite XCHR, Porvorim, Bardez-Goa.

(2)Simon Fernandes, of major age;

(3)Christalina Fernandes, wife of Respondent No.2, resident of House No.595/2, Baga-Arpora, Bardez-Goa.

(4)Mr. Marian Fernandes, major of age;

(5)Mrs. Doris Fernandes, major of age, wife of Respondent No.4, both residents of House No.595/3, Baga-Arpora, Bardez-Goa. ... Respondents.

Mr. P. S. Rao, Advocate for the Petitioners.

Mr. S. Vales, Advocate for Respondent No. 1.

CORAM : N. A. BRITTO, J.

DAT E : 10TH NOVEMBER,2004

**ORAL JUDGMENT**

Rule. Heard Mr. P. S. Rao, the learned Counsel on behalf of the Petitioners and Mr. S. Vales, the learned Counsel on behalf of Respondent No.1.

2. The Petitioners herein, who are some of the Defendants in R.C.S. No.172/2004, Respondent Nos. 2 to 5 being the other Defendants, seek a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the Order dated 26-10-2004 of the learned Civil Judge, Junior Division, Mapusa, passed in the said Civil Suit by way of temporary mandatory injunction by which the Defendants have been directed to remove the temporary roof placed on the pillars within a period of seven days from 26-10-2004 failing which the Plaintiff in the said Civil Suit is directed to remove the same with the assistance of the Police at the cost of the Plaintiff.

3. The said Civil Suit was filed by the Plaintiff, Respondent No.1 herein, with the allegation that the said Defendants had carried out illegal construction/illegal activities in the portion of the suit

property surveyed under No.250/2 purchased by the Plaintiff by Deed dated 2-12-2003. The Plaintiff in the said Civil Suit inter alia sought for temporary injunction to restrain the said Defendants from carrying out the illegal construction outside the purported dwelling house of the said Defendants and also from carrying out the business of Bar and Restaurant outside the said purported dwelling house and in a portion of the said suit property. The Defendants were served with summons for the settlement of issues on 1-10-2004 and on the same day, it appears that upon orders of the learned Civil Judge, Junior Division, the Bailiff prepared a report of the alleged illegal construction. On 5-10-2004, some of the Defendants had appeared before the learned Civil Judge, Junior Division and an Order directing the maintnance of status quo was passed. On 25-10-2004, the said Plaintiff filed an application under Section 151 C.P.C. alleging that Respondent Nos.2 to 4 had violated the Order directing maintenance of status quo dated 5-10-2004. The said Plaintiff also sought a further direction from the learned Civil Judge, Junior Division directing the Bailiff to remove the temporary wooden roofing on the pillars, which according to the Plaintiff, was done by the said Defendants in violation of the Order directing the maintenanc of status suo. Thereafter, on 26-10-2004, the learned Civil Judge, Junior Division proceeded to pass the impugned Order directing the said Defendants to remove the said temporary roof placed on the said pillars. This was admittedly done without hearing the Defendants, and, the main grievance of the said Defendants, some of whom are the Petitioners

before this Court, as already stated, is that the impugned Order dated 26-10-2004 was passed behind their back and without hearing them.

4. Mr. P. S. Rao, the learned Counsel on behalf of the Petitioners has submitted before me that this is a fit case for this Court to invoke its jurisdiction under Articles 226 and/or 227 of the Constitution because the learned Civil Judge, Junior Division has violated the principles of natural justice and has passed the impugned Order.

5. On the other hand, Mr. S. Vales, the learned Counsel on behalf of the said Plaintiff has submitted that the Petitioners who are some of the Defendants in the said Civil Suit have an alternative remedy of filing an appeal and, therefore, this Court need not exercise its writ jurisdiction which is discretionary. Mr. Vales, has placed reliance on the case of **A. Venkatasubbiah Naidu** v. **S. Chellappan and others** (AIR 2000 SC 3032).

6. In the above case of **A. Venkatasubbiah Naidu** v. **S. Chellappan and others** (supra) the Hon'ble Supreme Court stated that it cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule(R.1, O.39 C.P.C.). In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till

further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate Court or to approach the same Court which passed the ex parte order for any relief. The Hon'ble Supreme Court also stated that although no hurdle can be put against the exercise of the constitutional powers of the High Court(under Article 227 of the Constitution) it is a well recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. The Hon'ble Supreme Court further observed that the learned Single Judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. There can be no two opinions that the writ jurisdiction under Article 226 as well as Article 227 of the Constitution is very wide, expansive, unqualified and extraordinary in nature but is subject to certain self imposed limitations and one of them being that the Court will ordinarily not exercise this extraordinary power when the affected party has an ordinary adequate remedy to set right a wrong order.

7. In the case of **U.P. State Co-operative Land Development Bank Ltd.** v. **Chandra Bhan Dubey and others** (AIR 1999 SC 753) the Hon'ble Supreme Court stated as follows:-

> "High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in China shop' in the exercise of its jurisdiction under Article 226".

8. Since the learned Civil Judge by way of temporary mandatory injunction has directed the Defendants to remove the temporary roof, the Petitioners who are some of the Defendants in the said Civil Suit have more than one remedy to set the said wrong order right and, therefore, this Court need not exercise its extraordinary jurisdiction under Article 226 and/or 227 of the Constitution. Being so, the petition is hereby dismissed in limine. Nevertheless, the stay granted by the learned Civil Judge, Junior Division, which I am told continues till 11th instant shall continue for another period of ten days to enable the Petitioners/Defendants to file appropriate proceedings to challenge the said Order. Rule discharged.

Certified Copy expedited.

N. A. BRITTO, J

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